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Attorney for Moving Party
Leslie Guttadauro

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re

**CAROL A. SIGNOR
aka LENA SIGNOR**

Debtor.

LESLIE GUTTADAURO

Movant,

vs.

**CAROL A. SIGNOR
aka LENA SIGNOR**

Respondent.

Case No. 10-63343-SLJ-13

Chapter 13

**DECLARATION OF LESLIE GUTTADAURO
IN SUPPORT OF MOTION FOR RELIEF
FROM STAY**

DATE: May 14, 2013

TIME: 10:30 a.m.

PLACE: United States Bankruptcy Court
280 S. 1st Street, Courtroom 3099
San Jose, CA 95113

BEFORE: The Honorable Stephen L. Johnson

My name is Leslie Guttadauro and I am a Secured Creditor in the instant case. I make this declaration under penalty of perjury under the laws of the United States of America and the State of California. I have personal and first hand knowledge as to the statements made and declared herein, except at such times as I so state the statement made herein is based on information from a source other than myself and as to those matters I believe them to be true. If called upon as a witness in a court of law, I would competently testify as to the following:

- 1 1. I am a secured creditor (hereinafter referred to as the "Movant"). I am specifically familiar
2 with the accounts and records concerning Carol A. Signor (hereinafter referred to as the
3 "Debtor") the Debtor herein and 4111 Rivoir Drive, San Jose, CA 95118 (hereinafter
4 referred to as the "Subject Property");
- 5 2. On December 31, 2010, Carol A. Signor ("Debtor") filed a voluntary petition under Chapter
6 13 of the Bankruptcy Code. Devin Derham-Burk is the appointed Chapter 13 Trustee.
- 7 3. On May 22, 2009 Debtor, for valuable consideration, made, executed and delivered to me a
8 promissory note in the principal sum of \$30,000.00. Pursuant to the promissory note Debtor
9 is obligated to make monthly principal and interest payments, when all outstanding amounts
10 are due and payable. A true and correct copy of the promissory note is attached as **Exhibit**
11 **One** and incorporated herein by reference.
- 12 4. On May 29, 2009 Debtor made, executed and delivered to a Deed of Trust and Assignment
13 of Rents (the "Deed of Trust") granting Movant a security interest in the certain real property
14 located at 4111 Rivoir Drive, San Jose, CA 95118 (hereinafter "Real Property"), which is
15 more fully described in the Deed of Trust and Assignment of Rent. The Deed of Trust and
16 Assignments of Rents was recorded on May 29, 2009, in the Santa Clara County, State of
17 California, Official Records Number: 20270820 which a true and correct copy of the Deed of
18 Trust and Assignment of Rent is attached as **Exhibit Two** and incorporated herein by
19 reference.
- 20 5. On September 02, 2009 Debtor made an additional advance, for valuable consideration,
21 made, executed and delivered to me a promissory note in the principal sum of \$30,000.00.
22 Pursuant to the promissory note Debtor is obligated to make monthly principal and interest
23 payments, when all outstanding amounts are due and payable. A true and correct copy of the
24 promissory note is attached as **Exhibit Three** and incorporated herein by reference.
- 25 6. On May 29, 2009 Debtor made, executed and delivered to an Additional Advance Under
26 Deed of Trust (the "Deed of Trust") granting Movant a security interest in the certain real
27 property located at 4111 Rivoir Drive, San Jose, CA 95118 (hereinafter "Real Property"),
28 which is more fully described in the Additional Advance Under Deed of Trust. Additional

1 Advance Under Deed of Trust was recorded on September 02, 2009, in the Santa Clara
2 County, State of California, Official Records Number: 20419374 which a true and correct
3 copy of the Deed of Trust and Assignment of Rent is attached as **Exhibit Four** and
4 incorporated herein by reference.

5 7. Debtor's failure to make post-petition mortgage payments as they become due in a Chapter
6 13 case constitutes "cause" for relief from the automatic stay pursuant to 11 United States
7 Code § 362(d)(1). In re Ellis, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). Accordingly, as the
8 Debtor has failed to make post-petition payments under the Note, I am entitled to relief
9 from the automatic stay pursuant to 11 United States Code § 362(d)(1).

10 8. Pursuant to the provisions of 11 United States Code § 361 and 362(d), I am entitled to
11 adequate protection of my interest in the Real Property.

12 9. By reason of the foregoing, I am entitled to relief from stay under 11 United States Code §
13 362(d)(1), based upon the failure of Debtor to provide adequate protection to
14 me and to make payments as required by 11 United States Code § 1322.

15
16
17
18 Dated this 11th day of April 2013.

19
20 /s/Leslie Guttadauro
21 LESLIE GUTTADAURO
22 Creditor herein
23
24
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28

EXHIBIT ONE



OLD REPUBLIC TITLE COMPANY

518 N. Santa Cruz Ave., Suite 200 • Los Gatos CA • 95030 • (408) 354-9128 • FAX (408) 404-0143

May 29, 2009

Co-Trustees of the Guttadauro Family Trust dated August 18, 2000
10251 Parlett Place
Cupertino, CA 95014

Re: Your Loan No.:
Borrower: Carol Ann Signor
Escrow No.: 0618001137-JJ
Property: 4111 Rivoir Drive, San Jose, CA 95118

The escrow covering the new financing on the above referenced property has been closed. The document securing your loan was recorded on 5/29/2009.

In connection with the completion of this escrow, we are enclosing the following:

1. Certified Copy of Closing Settlement Statement
2. *** Original Straight Note ***
3. Check in the amount of \$3,032.88

We appreciated the opportunity to work with you in this transaction and hope that it was handled to your satisfaction. We look forward to working with you again in the near future.

If you have any questions, please feel free to contact me.

Sincerely,

Barbara Duong
Escrow Assistant

enclosures: as noted above

DO NOT DESTROY THIS ORIGINAL NOTE

When paid, this Note, together with the Deed of Trust securing same, must be surrendered to the Trustee for cancellation before the Reconveyance will be issued.

Escrow No. 0618001137-JJ

STRAIGHT NOTE

\$30,000.00

Los Gatos, California

May 22, 2009

For value received, Carol Ann Signor, Trustee of The Carol "Lena" Living Trust dated April 4, 2006 ("payor/trustor") promises to pay to Leslie T. Guttadauro and Robin C. Guttadauro, Co-Trustees of The Guttadauro Family Trust dated August 18, 2000 ("payee/beneficiary") or order, at place designated by ("payee/beneficiary") the principal sum of Thirty Thousand and 00/100---dollars, with interest from June 01, 2009, until paid at the rate of ---10.000--- ten percent per annum, payable Two Hundred Fifty and 00/100---dollars, monthly or more, commencing July 01, 2009 and continuing on the same day of each and every month thereafter until January 01, 2012 at which time the entire remaining unpaid balance of principal and accrued interest hereunder shall become immediately due and payable.

LATE CHARGE: No late charge.

NO PREPAYMENT PENALTY: The privilege is hereby reserved to pay at any time, and from time to time, all or a portion of the principal amount owing, without penalty, prior to the maturity date expressed herein, and upon such payment, interest shall cease on that amount so paid.

DUE ON SALE: The Deed of Trust securing this Note contains the following provision: "In the event the herein described property or any part thereof, or any interest therein is sold, agreed to be sold, conveyed or alienated by the Trustor, or by the operation of law or otherwise, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, at the option of the holder hereof and without demand or notice shall immediately become due and payable."

BALLOON PAYMENT: This note is subject to Section 2966 of the Civil Code, which provides that the holder of this note shall give written notice to the Trustor, or his successor in interest, of prescribed information at least 90 and not more than 150 days before any balloon payment is due.

Principal, interest, and all other sums which may become due in connection with this note and the deed of trust securing same, shall be payable in lawful money of the United States of America. Should default be made in any payment when due, the whole sum of principal and interest shall become immediately due at the option of the holder of this note. If action be instituted on this note, I promise to pay such sum as the Court may fix as attorney's fees.

The Carol "Lena" Living Trust

By: Carol Ann Signor, Trustee
Carol Ann Signor, Trustee

EXHIBIT TWO

RECORDING REQUESTED BY:

Old Republic Title Company

ORDER NO.: 0618001137

APN: 451-28-105

WHEN RECORDED MAIL TO

The Guttadauro Family Trust
10251 Parlett Place
Cupertino, CA 95014

DOCUMENT: 20270820



Pages: 5

Fees... 33.00
Taxes...
Copies...
AMT PAID 33.00

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Old Republic Title Company

RDE # 006
5/29/2009
8:00 AM

Deed of Trust and Assignment of Rents

This Deed of Trust, made this 22nd day of May, 2009, between Carol Ann Signor, Trustee of The Carol "Lena" Living Trust dated April 4, 2006, herein called TRUSTOR, whose address is 4111 Rivoir Drive, San Jose, CA 95118, Old Republic Title Company, a California corporation, herein called TRUSTEE, and Leslie T. Guttadauro and Robin C. Guttadauro, Co-Trustees of The Guttadauro Family Trust dated August 18, 2000, herein called BENEFICIARY,

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Santa Clara County, California, described as:

See "Exhibit A" attached hereto and made a part hereof.

This Deed of Trust is junior and subordinate to a Deed of Trust in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for American Mortgage Network, Inc., a Delaware corporation in the amount of \$524,000.00, recorded July 1, 2005, in Book n/a, Page n/a, as Instrument No. 18451539, Official Records of Santa Clara County, California.

In the event the herein described property, or any part thereof, or any interest therein, is sold, agreed to be sold, conveyed or alienated by the Trustor, or by the operation of law or otherwise, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable.

Together With the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing:

1. Performance of each agreement of Trustor herein contained. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$30,000.00 executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

EXHIBIT THREE

DO NOT DESTROY THIS ADDITIONAL ADVANCE: When paid, this additional advance note and the other note with Deed of Trust securing same, must be surrendered to Trustee for cancellation before reconveyance will be made

**NOTE SECURED BY ADDITIONAL ADVANCE
INSTALLMENT NOTE - INTEREST ONLY**

\$30,000.00

Date: August 26, 2009

San Jose, California.

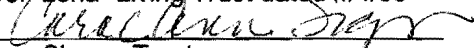
In installments as herein stated, for value received, I/We jointly and severally, promise to pay to **Leslie T. Guttadauro and Robin C. Guttadauro, Co-Trustees of the Guttadauro Family Trust dated August 18, 2000** or order, at **10251 Parlett Place, Cupertino, CA 95014**

the principal sum of **Thirty Thousand Dollars and No/100**, with interest from **August 28, 2009** on unpaid principal at the rate of **10.0000** per cent per annum, payable in monthly installments of **interest only Of \$250.00, or more** on the **same** day of each month, beginning on the **27th** day of, **September, 2010**, and continuing until the **1st** day of **January, 2012**, at which time the entire principal balance together with interest due thereon, shall become due and payable. (One year has been paid in advance)

"Should the trustor or his successors in interest, without the consent in writing of the beneficiary, sell, transfer or convey or permit to be sold, transferred or conveyed, his interest in the property, or any part thereof, then the beneficiary may, at his option, declare all sums secured hereby immediately due and payable."

Should default be made in payment of any of the installment of principal or interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due and payable. Principal and interest payable in lawful money of the United States. If action be instituted on this note, I/We promise to pay such sum as the Court may fix as attorney's fees. This note is secured by an Additional Advance Under Deed of Trust, with Old Republic Title Company, a California corporation, as TRUSTEE.

the Carol "Lena" Living Trust dated 4/4/06


Carol Ann Signor, Trustee

August 26, 2009

Mr. Guttadauro
10251 Parlett Place
Cupertino, CA 95014

Dear Mr. Guttadauro:

Old Republic Title will insure the additional advance for \$30,000 and issue an endorsement. When I receive the check I will pay you 1 year's interest (\$3,000.00) on this portion just like I did on the first \$30,000. Also I will pay you an additional \$1,500 for doing the loan.

For your records: My payment on the 1st loan is \$1,922.32 which principal, interest and taxes and insurance. The balance will be \$325,000 for 30 years.

The total payment due you each month beginning 2010 is \$500.00. Remember one year is paid in advance.

Thanks again for helping me.


Lena Signor
408-960-5627

August 26, 2009

Old Republic Title Company
518 N. Santa Cruz Avenue # 1 & 2
Los Gatos, CA 95030

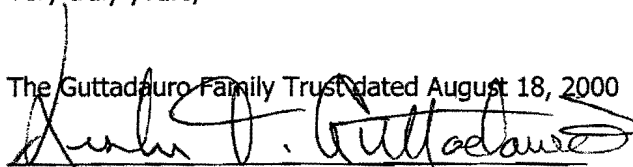
Re: Escrow 0618001137-JJ
Recorded May 27, 2009

Please record the enclosed *Additional Advance Under Deed of Trust* for \$30,000 and issue your 108.7 endorsement and charge the borrower for all the fees associated with these instructions.

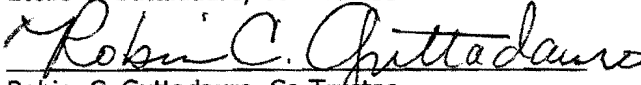
Our address for mailing the endorsement is: The Guttadauro Family Trust, 10251 Parlett Place, Cupertino, CA 95014. If you require any items from the undersigned please let us know.

Very truly yours,

The Guttadauro Family Trust dated August 18, 2000

 Trustee

Leslie F. Guttadauro, Co-Trustee

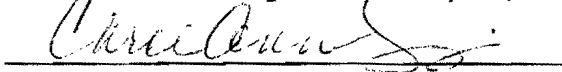


Robin C. Guttadauro, Co-Trustee

Date: August 28, 2009

Read and Approved:

The Carol "Lena" Living Trust dated April 4, 2006



Carol Ann Signor, Trustee

Date: 8-26-09

Sent 8/29/09
Fax

EXHIBIT FOUR

0618001137-JJ

DOCUMENT: 20419374

Pages: 2

RECORDING REQUESTED BY:



Fees.... 15.00
Taxes...
Copies...
AMT PAID 15.00

AND WHEN RECORDED MAIL TO:

The Guttadauro Family Trust
10251 Parlett Place
Cupertino, CA 95014

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Old Republic Title Company

RDE # 005
9/02/2009
8:00 AM

APN# 451-28-105

THIS SPACE FOR RECORDER'S USE ONLY:

Escrow No.:

Title Order No.:

ADDITIONAL ADVANCE UNDER DEED OF TRUST

THIS ADDITIONAL ADVANCE UNDER DEED OF TRUST, made August 26, 2009 BY Carol Ann Signor, Trustee of the Carol "Lena" Living Trust dated April 4, 2006, herein called Trustor, whose address is 4111 Rivoir Drive, San Jose, CA 95118 referencing a recorded Deed of Trust dated May 22, 2009 and Recorded May 27, 2009 as instrument number 20270820 with OLD REPUBLIC TITLE COMPANY., a California Corporation, herein as Trustee, and , Leslie T. Guttadauro and Robin C. Guttadauro, CO-Trustees of the Guttadauro Family Trust dated August 18, 2000 as BENEFICIARY, secured on the property located the City of San Jose, Santa Clara County, California, described as: LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF Also Known as: 4111 Rivoir Drive, San Jose, CA 95118

The additional advance amount if \$30,000.00 (Thirty Thousand Dollars and No/100)

TOGETHER WITH the rents, issues and profits thereof, **SUBJECT, HOWEVER**, to the right power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits. **For the Purpose of Securing:** 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by two promissory notes and any extensions or renewal thereof, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured. ALL TERMS AND CONDITIONS OF THE ORIGINAL DEED OF TRUST REMAIN IN EFFECT>

DATED August 26, 2009

STATE OF CALIFORNIA
COUNTY OF Santa Clara
On 8/26/09
before me, Francesca Lobue,
A Notary Public in and for said State personally appeared
Carol Ann Signor

THE CAROL "LENA" LIVING TRUST DATED 4/4/06
Carol Ann Signor
Carol Ann Signor, Trustee

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.



Signature Francesca Lobue

(Seal)

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

All of Lot 93, as shown upon that certain Map entitled "Tract No. 2766 Ross Park Homes Unit No. 2", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 10, 1960 in Book 124 of Maps, at Page 3.

APN: 451-28-105